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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/820,091	03/28/2001	Kenneth W. Nimmons	2817/228	2535
757	7590	11/24/2003	EXAMINER	
BRINKS HOFER GILSON & LIONE			ARYANPOUR, MITRA	
P.O. BOX 10395			ART UNIT	
CHICAGO, IL 60611			PAPER NUMBER	

3711

DATE MAILED: 11/24/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/820,091

Applicant(s)

NIMMONS, KENNETH W.

Examiner

Mitra Aryanpour

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-13, 15 and 32-56 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-13, 16-5, 18 and 32-56 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- ☐ Interview Summary (PTO-413) Paper No(s). _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 2-4, 7-11, 13, 15-18, 32-40, 42, 43, 45-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bartoli (5,000,447) in view of page 220 of "SPORTS - The Complete Visual Reference book (SPORTS)" and Motooka et al (5,584,133).

Regarding claims 7 and 8, Bartoli shows a deformable base for use during baseball comprising: a bottom, a top face, and a sidewall attached to the bottom and top face (see figure 2). Bartoli is silent as to the use of identification labels on the top and/or sidewall of the base. Providing identification label(s) on sports paraphernalia is old and conventional. Additionally, the location of the identification label raises no criticality, and the base would work equally well regardless of where the label is positioned. To the extent if one argues that it is not obvious to include identification labels on a baseball base or any other sports paraphernalia, on page 220 of the SPORTS, The Complete Visual Reference book (SPORTS), a conventional base is shown having an identification label positioned on the top center of the base. It would have been obvious in view of (SPORTS) to have also included an identification label for the base of Bartoli in order to design the base for a particular team or to advertise a particular company, and it would have been obvious to include identification label for the base of Bartoli as shown by SPORTS in order to personalize the base.

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SPORTS is silent as to the method and means for applying the identification label on to the base. Therefore, the method and means for applying or positioning printed image or indicia on the modified base of Bartoli, is not expressly disclosed. There are numerous methods available for applying printed images (indicia) on sports paraphernalia. Motooka et al shows a baseball catching implement having a name plate fitting of rubber or synthetic resin having elasticity affixed to a back member of the implement at any desired position, wherein the name plate fitting includes a frame member having a contour corresponding to that of a name plate. It would have been obvious in view of Motooka et al to have included a nameplate for holding indicia on the modified base of Bartoli so that the indicia could be readily interchanged so that the base can be personalized by different teams or by different advertisement companies.

Regarding claims 2-4, see comments on lines 7-10 of claims 7 and 8.

Regarding claims 9-11, see comments on lines 7-10 of claims 7 and 8.

Regarding claim 13, Bartoli shows the base includes first, second, third and fourth sidewalls (best seen in figure 2) forming an enclosed wall connected to a top and a bottom face. The general appearance of the base is square-like (best shown in figures 1 and 4).

Regarding claim 15, Bartoli also shows a post (8) attached to the bottom face of the base.

Regarding claim 16, Bartoli further shows a plate (10) attached to the post (8); and wherein the combination of the plate and post are embedded into the bottom face of the base. Note: the combined assembly (plate and post) when embedded in the bottom face, inherently create a lip section so that a portion of the plate is securely held on the bottom face (see column 3, lines 1-9).



Regarding claims 17 and 18, Bartoli shows the resiliently deformable material is rubber (See column 2, lines 54-61).

Regarding claims 32 and 34, Bartoli shows the sidewalls define a square-like shape (see figures 3 and 4).

Regarding claim 33, see the comments for claim 13.

Regarding claim 35, see comments for claim 15.

Regarding claims 36 and 37, see comments for claims 17 and 18.

Regarding claims 38-40, see comments for claims 2-4.

Regarding claim 42, see the comments for claims 7, 13 and 32.

Regarding claim 43, see the comments for claims 8, 33 and 34.

Regarding claim 45, see comments for claim 15.

Regarding claim 46, see comments for claim 16.

Regarding claims 47 and 48 see comments for claims 17 and 18.

Regarding claim 49, see the comments for claim 15.

Regarding claim 50, see the comments for claim 16.

Regarding claim 51, see the comments for claim 17.

Regarding claim 52, see the comments for claim 18.

Regarding claims 53-55, see the comments for claim 2-4.

3. Claims 5, 6, 12, 41, 44 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art of record as applied to claims 2, 9, 38 and 43 and further in view of Kennedy, III et al (6,200,239).

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Regarding claim 5, Bartoli is silent as to the base having an identification label or indicia. Bartoli as modified in view of (SPORTS) shows that it is well known to provide indicia on baseball base. However, SPORTS is silent as to the method and means for applying the identification label on to the base. Therefore, the method and means for applying or positioning printed image or indicia on the modified base of Bartoli, is not expressly disclosed. Bartoli as further modified in view of Motooka et al shows a baseball catching implement having a name plate positioned in a cutout which may be covered with a plate or film of transparent resin for protecting the name plate (10), and wherein the name plate may be secured at any desired position. Note: A film of transparent resin is considered as art recognized equivalent to a transparent polymer coating. Nevertheless, if one should argue that such is not the case, Kennedy, III et al shows a sports ball and various methods of applying indicia in the form of a logo on the sports ball. Some suggested methods are, a pressure sensitive hot melt adhesive; and a pressure sensitive adhesive and alternatively applying a transparent polymer over the indicia for protective purposes (see column 4, lines 29-67). It would have been obvious to one of ordinary skill in the art in view of Kennedy, III et al to have included a coating on the identification label of Bartoli's base, in order to prolong the life of the label and to protect the indicia from contamination.

Regarding claim 6, Bartoli as modified above is silent as to the means for applying the indication label on the baseball base. Official Notice is taken that many well-known means and methods are known for applying identification label or indicia on a sports paraphernalia. One well-known method is releasably printing the image on paper or fabric and then applying it to the desired surface either by pressure, heat or a combination of the aforementioned, and it would

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have been obvious to do the same for the modified base of Bartoli in order to make the process more economical.

Regarding claim 12, see comments for claim 5.

Regarding claim 41, see comments for claim 5.

Regarding claim 44, see comments for claim 5.

Regarding claim 56, see the comments for claim 5.

Response to Arguments

4. Applicant's arguments filed 15 September 2003 have been fully considered but they are not persuasive. In response to applicant's argument that *Motooka et al* and *Kennedy, III et al* are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, *Motooka et al* teaches applying a removable identification plate on a ball catching implement. *Motooka et al* reference shows means of personalizing a baseball paraphernalia, in the present instant it is considered to be relevant art, since applicant is also applying identification label to personalize a baseball base. In the case of *Kennedy, III et al*, again the reference teaches various means of applying indicia on a sports paraphernalia (a basketball). Both prior art references clearly demonstrate the use of personalized identification label on sports objects and various means and methods of applying and protecting the indicia. There is nothing new or unobvious about personalizing sports paraphernalia. Furthermore there is nothing unobvious about utilizing various well-known means for applying identification labels (indicia) on sports paraphernalia.

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Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mitra Aryanpour whose telephone number is 703-308-3550. The examiner can normally be reached on Monday - Friday 9:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 703-308-1513. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

MA
18 November 2003


Sebastiano Passaniti
Primary Examiner